

**MCGINNIS & ASSOCIATES, INC.**  
**614.431.1344 COLUMBUS, OHIO 800.498.2451**

1                   IN THE UNITED STATES DISTRICT COURT

2                   SOUTHERN DISTRICT OF OHIO

3                   EASTERN DIVISION

4                   - - -

5       John C. Ruiz-Bueno,                    )

6       III, et al.,                                )   Case No. 2:12-cv-00809

7                   Plaintiffs,                    )   Judge Frost

8               vs.                                 )   Magistrate Judge Kemp

9       Franklin County Sheriff                )

10      Zach Scott, et al,                        )

11                   Defendants.                    )

12                   - - -

13               Deposition of Damien Neely, a Defendant

14      herein, called by the Plaintiffs for

15      cross-examination under the applicable rules of

16      Federal Civil Court Procedure, taken before me,

17      Amy L. Miller, Registered Professional Reporter

18      and Notary Public in and for the State of Ohio,

19      pursuant to notice and stipulations of counsel

20      hereinafter set forth, at the offices of the

21      Franklin County Prosecuting Attorney's Office,

22      373 South High Street, 13th Floor, on Monday,

23      July 15, 2013, beginning at 1:05 o'clock p.m. and

24      concluding on the same day.

25                   - - -

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1 APPEARANCES:

2

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1 APPEARANCES: (CONTINUED)

2

3 ON BEHALF OF THE DEFENDANTS FRANKLIN COUNTY  
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5 Ron O'Brien

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- - -

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S T I P U L A T I O N S

- - -

It is stipulated by and among counsel for the respective parties that the deposition of Damien Neely, a Defendant herein, called by the Plaintiffs for cross-examination under the applicable rules of Federal Civil Court Procedure, may be taken at this time by the Notary pursuant to notice; that said deposition may be reduced to writing in stenotype by the Notary, whose notes may thereafter be transcribed out of the presence of the witness; that proof of the official character and qualification of the Notary is waived; that the witness may sign the transcript of his deposition before a Notary other than the Notary taking his deposition; said deposition to have the same force and effect as though the witness had signed the transcript of his deposition before the Notary taking it.

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I N D E X

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WITNESS	PAGE
Damien Neely	
Cross-examination by Mr. Campinha-Bacote	6

- - -

EXHIBITS	MARKED
Exhibit No. 11 -	14
Defendant Damien Neely's Responses to	
Plaintiffs' First Set of	
Interrogatories and Production	
Exhibit No. 12 -	44

Photographs

- - -

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1 DAMIEN G. NEELY

2 of lawful age, being by me first duly placed  
3 under oath, as prescribed by law, was examined  
4 and testified as follows:

5 CROSS-EXAMINATION

6 BY MR. CAMPINHA-BACOTE:

7 Q. Mr. Neely, if you would please state  
8 your name for the record.

9 A. My name is Damien Germaine Neely.

10 Q. Can you spell that, please?

11 A. D-a-m-i-e-n, G-e-r-m-a-i-n-e, N-e-e-l-y.

12 Q. Thank you very much. And have you ever  
13 had your deposition taken before?

14 A. I have not.

15 Q. Okay. Before we start, I want to go  
16 over a few ground rules, just so you know how  
17 this process is going to work here today. The  
18 first is that you do notice we have a court  
19 reporter present here today, so what I would ask  
20 is that you try not to speak too fast because  
21 sometimes it can be difficult for the court  
22 reporter to transcribe what we're saying if we're  
23 talking too fast.

24 In addition, I would ask that we not  
25 speak over one another. Again, with the court

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1 reporter here, it's going to make it very  
2 difficult for her to try to capture what we're  
3 both saying if we're talking over each other, so  
4 I'll be respectful and let you fully answer my  
5 questions, if you, in turn, let me finish asking  
6 my question before you answer.

7 Oftentimes, people will have nonverbal  
8 gestures such as head nods or "uh-huhs", and I  
9 would ask again, because we have a court reporter  
10 here today, that you make sure you articulate and  
11 verbalize all of your responses here today.

12 If I ask you a question, I'm going to  
13 assume that you understand the question, so if  
14 you don't understand anything I'm saying, just  
15 let me know. I'll be happy to rephrase it so  
16 that you do understand everything that I'm  
17 saying.

18 And lastly and maybe most importantly,  
19 if at any point in time here today you feel like  
20 you need to take a break, I'm completely fine  
21 with that. This isn't a marathon. The only  
22 question -- or the only condition I would have is  
23 that if I have a pending question to you that you  
24 finish the question that's been asked to you  
25 before you take a break. I assume at some point

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1 in time you'll need to go to the bathroom or  
2 might just want to take a break in general, so  
3 just let me know or let your attorney know, and  
4 we'll make sure to do that.

5 Does all that sound okay to you?

6 A. It does.

7 Q. Great. Is there any reason why you  
8 believe you can't testify truthfully here today?

9 A. No, there is not.

10 Q. Okay. And are you presently under the  
11 influence of any medications, be it prescription  
12 or nonprescription?

13 A. Yes, I take metformin.

14 Q. Okay. Do you feel like that would  
15 impact your ability to testify here today?

16 MR. SHEETS: I'm going to object because  
17 that's medically privileged information. I mean,  
18 you can answer about whether it would -- you  
19 understand what my objection is?

20 I have no problem with him asking you  
21 whether you can testify truthfully, but I don't  
22 want you talking about things that are between  
23 you and your doctor.

24 BY MR. CAMPINHA-BACOTE:

25 Q. Do you feel that -- I'll ask you the



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1 question again. Do you feel that the fact that  
2 you are on medication would prevent you from  
3 testifying here today truthfully?

4 A. No.

5 Q. Okay. Did you prepare for this  
6 deposition?

7 A. No.

8 Q. Did you meet with your attorneys before  
9 being deposed here today?

10 A. Yes.

11 Q. When did you meet with them? And before  
12 you answer, just so we're clear, I'm not  
13 interested in knowing what you said between your  
14 attorney, because that is certainly privileged,  
15 I'm not entitled to that, but with respect to  
16 when you met, that's what I'm interested in with  
17 that question, if you can recall. If you don't  
18 recall, that's fine.

19 A. It was Thursday.

20 Q. Of last week?

21 A. Of last week.

22 Q. Okay. Was that the first time you met  
23 with your attorneys?

24 A. No.

25 Q. Okay. When else did you meet with your

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1 attorneys?

2 A. I don't remember.

3 Q. Do you recall how many times, if it was  
4 one prior time --

5 MR. SHEETS: I'm going to go ahead and  
6 object based on attorney/client privilege. I  
7 think we're just getting close to the area.

8 MR. CAMPINHA-BACOTE: Okay. I'm just --

9 MR. SHEETS: If you can recall how many  
10 times you met with me or Mary Jane, you can  
11 answer.

12 THE WITNESS: I cannot recall how many  
13 times.

14 BY MR. CAMPINHA-BACOTE:

15 Q. Would it be more than five?

16 A. No.

17 Q. More than two?

18 MR. SHEETS: I think he said he can't  
19 remember, so if we can move on, that would be  
20 great.

21 BY MR. CAMPINHA-BACOTE:

22 Q. Right. If you can just verbalize a  
23 response.

24 A. I don't remember.

25 Q. Okay. And, lastly, do you recall

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1 roughly when that happened, whether it was in the  
2 past couple of months, was it in the past six  
3 months, year? Again, if you don't recall, that's  
4 fine.

5 A. Other than Thursday, no, I do not  
6 recall.

7 Q. Okay. And who was all present when you  
8 met with your attorneys?

9 A. I do not recall.

10 Q. Was Mr. Sheets present?

11 MR. SHEETS: Objection. I don't want  
12 him answering about any meeting with me. I'm  
13 sorry.

14 MR. CAMPINHA-BACOTE: Well, I have the  
15 right to know who was present, I'm not asking for  
16 communications.

17 MR. SHEETS: He just said he can't  
18 recall.

19 MR. CAMPINHA-BACOTE: Let me conduct my  
20 deposition. He has not answered the question  
21 yet. We can go back to the court reporter.

22 MR. SHEETS: I think he said he doesn't  
23 know.

24 MR. CAMPINHA-BACOTE: My last question  
25 was -- let's go back to the reporter, starting

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1 with my last question was, "Was Mr. Sheets  
2 present," if you can tell me if the witness  
3 responded to that question.

4 MR. SHEETS: How about I just stipulate  
5 I was present and then we can move on.

6 MR. CAMPINHA-BACOTE: Okay.

7 BY MR. CAMPINHA-BACOTE:

8 Q. So Mr. Sheets was present?

9 MR. SHEETS: Yes, I met with my clients.

10 BY MR. CAMPINHA-BACOTE:

11 Q. Was Miss Mary Jane Martin present to the  
12 best of your recollection?

13 A. I don't remember who was all there.

14 Q. Okay. And do you remember how many  
15 people were there?

16 A. No, I do not.

17 Q. Okay. Can you recall how long you met  
18 for?

19 A. No, I do not.

20 Q. Okay. Did you review any documents  
21 during any of those meetings?

22 MR. SHEETS: Objection. To the extent  
23 it's anything that we showed you or discussed, do  
24 not answer those questions.

25 BY MR. CAMPINHA-BACOTE:

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1           Q.    I'm not asking what documents you  
2    reviewed.  I'm asking if you reviewed documents.

3           A.    I'll defer to my attorney on that one.

4           Q.    Okay.  Well, you --

5               MR. CAMPINHA-BACOTE:  Scott, if you can  
6    instruct him to answer that question.

7               MR. SHEETS:  I'm not going to do that,  
8    Avonte.  I feel like these are really just  
9    probing into areas that I'm not comfortable with.  
10   I have attorney/client privilege with him.

11              MR. CAMPINHA-BACOTE:  Let's go off the  
12   record.

13              (Discussion held off the record.)

14              MR. CAMPINHA-BACOTE:  If you would read  
15   the witness back the last question.

16              (Question read back as requested.)

17              THE WITNESS:  Yes.

18   BY MR. CAMPINHA-BACOTE:

19           Q.    Thank you.

20               And, again, I'm not asking for the  
21   contents of information, but did you produce any  
22   documents to your attorneys when you met with  
23   them?

24           A.    No.

25           Q.    Okay.  Thank you.

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1           MR. CAMPINHA-BACOTE: I'm going to have  
2       this marked as whatever the next exhibit is.

3                               - - -

4           Thereupon, Exhibit No. 11 was marked for  
5       purposes of identification.

6                               - - -

7       BY MR. CAMPINHA-BACOTE:

8           Q.     Mr. Neely, you have a copy right there.

9           MR. SHEETS: I get to look at what  
10     he's --

11           MR. CAMPINHA-BACOTE: Absolutely. Let  
12     me know when you're done reviewing it, Scott.

13           MR. SHEETS: All right, thanks.

14     BY MR. CAMPINHA-BACOTE:

15           Q.     Mr. Neely, I'm handing you what's been  
16     marked for identification purposes as Exhibit 11.

17                    Could you please take a look at that  
18     document and let me know when you're finished  
19     reviewing it?

20           A.     I'm finished reviewing it.

21           Q.     Just hold on for a second, sir. Have  
22     you ever seen that document before?

23           A.     I have.

24           Q.     Okay. And if you turn to the second to  
25     last page, you'll see that it's a verification

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1 page, I believe it's Page 16.

2 And is that your signature under -- or  
3 above Damien Neely?

4 A. That is my signature.

5 Q. And you signed that in front of a public  
6 notary?

7 A. I did.

8 Q. Okay. And as you can read where it  
9 says, "Damien Neely, being first duly sworn,"  
10 this documents certifies that you've read each  
11 response and you swear to the contents and the  
12 accuracy of that, correct?

13 A. That is correct.

14 Q. If you turn to the first page, it  
15 says -- Interrogatory Number 1 at the bottom. It  
16 says, "State the names and addresses of all  
17 persons that assisted with answering these  
18 interrogatories," and then if you turn to Page 2,  
19 it states your name.

20 Do you see that?

21 A. I see that.

22 Q. So am I to assume that you were the one  
23 who drafted these documents or was there anyone  
24 else that helped assist this?

25 A. I did not draft these documents.

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1           Q.     So you would agree that this is an  
2     incorrect statement insofar as there were other  
3     people that assisted you with answering these  
4     interrogatories and preparing these?

5           MR. YOSOWITZ:   Objection.

6           MR. SHEETS:   Objection, no foundation.  
7     I'm not sure what the point of the question is,  
8     but I think it goes without saying that attorneys  
9     help their clients prepare interrogatory  
10    responses.

11          MR. CAMPINHA-BACOTE:   I understand that,  
12    and there are no speaking objections in  
13    depositions, just so we're clear about that.

14          MR. SHEETS:   That's not what your  
15    partner said on Friday, but I guess you guys  
16    finally got that one right, but whatever, however  
17    you want to handle it.

18          MR. CAMPINHA-BACOTE:   If you could read  
19    that question back again, if you have it.

20                 (Question read back as requested.)

21          MR. SHEETS:   Yes or no.

22          THE WITNESS:   I will say yes, it was.

23    BY MR. CAMPINHA-BACOTE:

24          Q.     Thank you very much.   All right.   Let's  
25    talk about some of your background.



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1           Could you please state your work address  
2   for the record?

3           A.    2460 Jackson Pike, Columbus, Ohio 43223.

4           MR. CAMPINHA-BACOTE:  Let's go off the  
5   record real quick.

6           (Discussion held off the record.)

7   BY MR. CAMPINHA-BACOTE:

8           Q.    Are you married?

9           A.    I am married.

10          Q.    And what is your wife's name?

11          A.    Benita Neely.

12          Q.    How do you spell Benita?

13          A.    B-e-n-i-t-a.

14          Q.    Thank you.  Do you have any kids?

15          A.    No, I do not.

16          Q.    Okay.  What high school did you go to?

17          A.    Walnut Hills High School.

18          Q.    Cincinnati, Ohio?

19          A.    Cincinnati, Ohio.

20          Q.    Okay.  After high school did you go to  
21   college?

22          A.    I went to Ohio State University.

23          Q.    Okay.  Did you graduate?

24          A.    I did not.

25          Q.    What year did you begin college at Ohio

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1 State?

2 A. In 1994.

3 Q. Did you go to any other type of  
4 educational institutions after high school apart  
5 from Ohio State?

6 A. I don't remember. I don't recall.

7 Q. Did you go to graduate school, for  
8 example?

9 A. No, I did not.

10 Q. Do you hold any certifications or  
11 licenses?

12 A. Other than a correctionalist, no.

13 Q. Okay, other than correctional.

14 And I'm assuming that you received  
15 training as a corrections officer, as a deputy?

16 A. That's correct.

17 Q. And when did you receive that training,  
18 if you can recall?

19 A. I would say 1998.

20 Q. Okay. How long did that training last?

21 A. It was -- I don't remember.

22 Q. Okay. Did you hold any certifications  
23 such as like CPR or anything like that?

24 A. Yes, we did.

25 Q. So are you presently certified in

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1 administering CPR?

2 A. I am.

3 Q. And you're current and up to date?

4 A. I am.

5 Q. Okay. Let's start with after college,  
6 what was your first job? And I'll limit that  
7 to -- I'm not looking for if you worked as a  
8 pizza boy or something like that. Your first  
9 professional employment.

10 A. After college -- I actually worked  
11 during college.

12 Q. Okay.

13 A. And that was with -- then it was RPS,  
14 Roadway Packing Systems before Fed-Ex bought  
15 them.

16 Q. You said RPS?

17 A. Yes.

18 Q. Okay.

19 A. From RPS, I also worked at Papa John's.

20 Q. Okay. And when you worked at RPS, was  
21 that here in Columbus?

22 A. Just south of Columbus in Grove City.

23 Q. Okay. And what was your position there?

24 A. Loading boxes on a truck.

25 Q. Okay. Do you recall roughly what year

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1     that was?

2           A.     I do not.

3           Q.     Okay.  What was your next job after  
4     that?

5           A.     Papa John's, I became a manager at Papa  
6     John's, so I quit working at RPS.

7           Q.     How about after Papa John's?

8           A.     Franklin County Sheriff's Office.

9           Q.     And what year did you begin with the  
10    Franklin County Sheriff's Office?

11          A.     1998.

12          Q.     And what was your position with the FCSO  
13    when you began in 1998?

14          A.     Deputy sheriff.

15          Q.     Since then have you received any  
16    promotions or any type of things of that nature?

17          A.     I have not.

18          Q.     Okay.

19                 MR. SHEETS:  Do you want to know -- can  
20    I interrupt you one second?  We can take care of  
21    the home address thing if you would like.

22                 MR. CAMPINHA-BACOTE:  Sure.  Do you want  
23    to go off the record for that?

24                 MR. SHEETS:  Yes.

25                 MR. CAMPINHA-BACOTE:  Let's go off the

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1 record, please.

2 (Discussion held off the record.)

3 BY MR. CAMPINHA-BACOTE:

4 Q. Deputy Neely, we went off the record a  
5 moment ago, and you gave me your home address. I  
6 just want to verify that that was your true and  
7 accurate home address; is that correct?

8 A. That's correct.

9 Q. Thank you. Now, let's go back. I  
10 believe the last thing we talked about was your  
11 employment with the FCSO, and you became a deputy  
12 in 1998.

13 I think you spoke to this briefly, but  
14 you said in terms of training that you received  
15 to become a deputy, was there any other training  
16 that you received other than what you mentioned  
17 to me previously?

18 A. Not that I recall, no.

19 Q. And what was the official name of this  
20 training, if you know?

21 A. Corrections classes.

22 Q. Corrections classes?

23 A. Yes.

24 Q. I'll keep referring to it as that then.  
25 In these corrections classes did you have any

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1 type of courtroom -- excuse me -- any classroom  
2 instruction?

3 A. Yes.

4 Q. Okay. If you can just explain to me in  
5 your own words kind of how that corrections  
6 classes happened, whether there was anything  
7 apart from classroom instruction or if there was  
8 any type of, you know, training that was out in  
9 the field, for example. Just walk me through  
10 since I don't really know too much about that,  
11 how that operates and works.

12 A. All the corrections classes training  
13 occurred in the classroom. We have instructors  
14 come in and pretty much was lecture-based  
15 teaching.

16 Q. Okay. Can you recall any of the types  
17 of the classes or even topics that you learned in  
18 corrections classes?

19 A. Interpersonal communication skills.  
20 Wow, that was a very long time ago.

21 Q. I know this was 15 years ago. I'm  
22 testing your memory. If you can't recall, that's  
23 fine, but just to the best of your memory.

24 A. CPR.

25 Q. That's okay. Let me ask some specific

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1 questions. Did you receive any instruction or  
2 take any classes on safety?

3 A. Safety in what manner?

4 Q. Safety of the inmates?

5 A. Not that I remember, no.

6 Q. What about responding to emergencies?

7 A. Yes.

8 Q. What about cleaning cells?

9 A. No.

10 Q. Okay. What about how to identify or  
11 deal with an inmate who has mental health issues?

12 A. No.

13 Q. And just so I know, sitting here today,  
14 what is the protocol if you discover an inmate  
15 who in your opinion has a mental condition or a  
16 mental health issue?

17 MR. SHEETS: Objection, but you can  
18 answer the question. It's all right.

19 THE WITNESS: Has the person already  
20 been diagnosed with a mental health condition?

21 BY MR. CAMPINHA-BACOTE:

22 Q. Let's say no.

23 A. They have not? Then if I believe that  
24 they have a mental health issue, I will refer  
25 them to the mental health specialist.

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1 Q. And do you know who that person is?

2 A. That is Doug Hahn.

3 Q. Now, what if they were known to be  
4 diagnosed with some type of a mental health  
5 condition, is there any type of protocol or  
6 special way you would treat them?

7 A. That would be up to Doug Hahn.

8 Q. Have you ever been instructed by Doug  
9 Hahn to treat someone differently because of  
10 their mental condition?

11 A. I have not.

12 Q. Are you aware of him informing anyone to  
13 treat any inmate differently because of a mental  
14 health condition?

15 A. No.

16 Q. Okay. Now, take me through a routine  
17 day, if you can, and I'm interested in knowing  
18 what your job responsibility was as deputy.

19 A. My job responsibilities are to maintain  
20 the security of the facility, the staff, and the  
21 inmates, and to perform miscellaneous duties as  
22 prescribed by the shift supervisor.

23 Q. So would you conduct rounds, for  
24 example?

25 A. What rounds do you mean, security



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1 watches?

2 Q. Correct.

3 A. Correct.

4 Q. What about head counts?

5 A. We are responsible for three head counts  
6 during the day.

7 Q. And were you responsible for three head  
8 counts during the time frame of August 2011 and  
9 September 2011?

10 A. Any time we work, we're responsible for  
11 three head counts.

12 Q. Were you responsible for doing med pass?

13 A. Well, the deputy assigned to the floor  
14 does med pass, yes.

15 Q. So in your experience, you've performed  
16 those duties several times?

17 A. I have.

18 Q. You've been assigned to that?

19 A. I have, yes.

20 Q. Explain to me how that works. I assume  
21 you're not the one who actually hands out the  
22 medication, but you assist some type of medical  
23 employee that does that?

24 A. I provide security for the nurse as she  
25 passes meds.

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1           Q.    Is there just one nurse or is there  
2   several nurses that you work with?

3           A.    Each floor is assigned one nurse.

4           Q.    Apart from this lawsuit, meaning the  
5   circumstances surrounding Edward Peterson's  
6   death, have you ever been disciplined since  
7   you've been there in 1998 for any reason?

8           A.    Yes.

9           Q.    And if you can recall which -- what you  
10   were disciplined for and when.

11          A.    When, I really couldn't tell you. Let's  
12   see.

13          Q.    If it helps to go backwards in terms of  
14   when was the last time you were disciplined  
15   starting from today?

16          A.    The last time I was disciplined, entered  
17   a cell to assist another deputy who I thought was  
18   in an altercation with an inmate. That was -- I  
19   don't know when it was.

20          Q.    And why were you disciplined for that?

21          A.    Because according to procedure, we  
22   should have called the code blue first.

23          Q.    Okay. And did that happen after the  
24   events surrounding Mr. Peterson's death or  
25   before?

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1           A.     That would be after.

2           Q.     Okay, after. Anything else happen after  
3 the death of Mr. Edward Peterson, which was, for  
4 the record, September 4th, 2011?

5           A.     Other than that incident, no.

6           Q.     Okay. Now, take me back before  
7 Mr. Peterson's death, if you can recall how many  
8 times you've been disciplined.

9           A.     I don't remember.

10          Q.     Is it safe to say that you have been  
11 disciplined before September 4th, 2011, or are  
12 you stating that you have not been disciplined?

13          A.     I have been disciplined before.

14          Q.     Okay. And I understand you can't recall  
15 exactly when that happened, but do you recall the  
16 nature of that discipline, what it was for?

17          A.     I do not.

18          Q.     Okay. Now, I assume that the instances  
19 you just referred me to were where you were  
20 formally disciplined. Now, what about informal  
21 reprimand, something that wouldn't result in a  
22 write-up, for example?

23          A.     No, not that I recall.

24          Q.     Okay. Now, regarding the events that  
25 involved the death of Mr. Edward Peterson, I

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1 understand that you spoke with Sergeant D'Errico  
2 about this matter, correct?

3 A. That is correct.

4 Q. Is there any other deputies that you  
5 spoke about -- that you spoke with about this  
6 matter during the course of the investigation?

7 A. Other than the two detectives from  
8 internal affairs, no.

9 Q. Okay. And those detectives were?

10 A. Detective D'Errico and I believe it was  
11 Lieutenant Eing, E-i-n-g.

12 Q. Thank you. I think we were trying to  
13 figure out how to spell that for the longest  
14 time.

15 Did you ever speak to Sheriff Scott  
16 about this?

17 A. I have not.

18 Q. Okay. Now, outside of Franklin County  
19 personnel, have you discussed this case with  
20 anyone?

21 A. My wife.

22 Q. Okay. And what did you speak with her  
23 about or what did you -- what was that  
24 communication?

25 A. I told her that I was being sued for --

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1 in regards to Mr. Peterson.

2 Q. Okay. Anything else?

3 A. That was it.

4 Q. Okay. Is there anyone else, whether it  
5 was family, friends, or anyone else that you  
6 spoke with about this case?

7 A. No.

8 Q. What about deputies, any other deputies  
9 that you spoke to about this case outside the  
10 investigation?

11 A. No.

12 Q. If you don't know the answer to the  
13 question, that's fine, just let me know, but are  
14 you aware of anyone in terms of deputies being  
15 disciplined as a result of the events surrounding  
16 the death of Mr. Edward Peterson sitting here  
17 today?

18 A. Not, not that I know of.

19 Q. If you can recall, during the months of  
20 August 5th, 2011, and September 4, 2011, you  
21 remember -- excuse me -- you remember an inmate  
22 by the name of Edward Peterson, correct?

23 A. I do.

24 Q. And it looks like from your schedule  
25 that you had several interactions with

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1 Mr. Peterson, correct?

2 A. By "interactions," what do you mean?

3 Q. Whether it was viewing him in his cell  
4 or having some type of exchange with him in terms  
5 of speaking to him.

6 A. Yeah.

7 Q. I want to refer you to -- I believe it's  
8 Exhibit 2.

9 MR. CAMPINHA-BACOTE: You should already  
10 have a copy of this, Guys. This is a copy of the  
11 report by Sergeant D'Errico.

12 BY MR. CAMPINHA-BACOTE:

13 Q. You can hand me that exhibit back, if  
14 you would like, this one right here. We're done  
15 with that. Thank you.

16 All right. Handing you what's been  
17 marked for identification purposes as Exhibit 2.  
18 Will you briefly take a look at this. You don't  
19 have to read every page, it's quite lengthy, but  
20 let me know if you've seen this document before  
21 or some of the contents of this document. You  
22 can keep that in front of you.

23 Do you recognize that document?

24 A. No, I've not seen this document before.

25 Q. Okay. Well, if you can turn to Page 7

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1 of that document, please. Page 7 appears to be a  
2 spreadsheet of when certain deputies were  
3 assigned to the isolation post during the course  
4 of Edward Peterson's stay at Franklin County,  
5 which was again August 5th, 2011 to  
6 September 4th, 2011. Do you see that, what I'm  
7 referring to on that page?

8 A. The spreadsheet at the bottom half?

9 Q. Correct.

10 A. That is correct, I see that.

11 Q. You'll notice that it goes on to Page 8  
12 if you flip the page.

13 A. Yes, I see that continues to Page 8.

14 Q. Do you see your name written under third  
15 shift numerous times?

16 A. I do.

17 Q. You can briefly take a look, but are  
18 those accurate records of when you were assigned  
19 to third shift in the isolation post during that  
20 time frame?

21 A. I am not entirely sure, but it looks  
22 right.

23 Q. I believe you -- you remember sitting  
24 down for an interview with Sergeant D'Errico,  
25 correct?

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1           A.     Correct.

2           Q.     And I believe he also showed you your  
3     schedule; is that true, if you can recall?

4           A.     I do not recall.

5           Q.     Okay. But would you stipulate here  
6     today that if this schedule at the time he showed  
7     it to you, you acknowledged that it was correct  
8     to the best of your knowledge, that it would be  
9     the same here today?

10               MR. SHEETS: Objection. Answer if you  
11     can.

12     BY MR. CAMPINHA-BACOTE:

13           Q.     If you need to me to rephrase it, I  
14     can --

15           A.     Yes, please.

16           Q.     In other words, has anything -- I'll  
17     represent to you this is the same document that  
18     Sergeant D'Errico showed you on January 26th of  
19     2012.

20               Is there any reason for you to doubt  
21     that anything has changed with respect to your  
22     schedule as it reflects here in this document?

23               MR. SHEETS: Objection. You can answer.

24               THE WITNESS: If this is the same  
25     thing -- you said this is the same that D'Errico



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1 gave you. I would probably say yes.

2 BY MR. CAMPINHA-BACOTE:

3 Q. Okay. I'm just making sure nothing has  
4 changed since then that you now want to say that  
5 actually, I've thought about it for a little bit  
6 and this is actually incorrect. But as far as  
7 you recall, this is accurate to the best of your  
8 representation?

9 A. I believe so, yes.

10 Q. Thank you.

11 So according to this schedule, it seems  
12 like you've had about 16 instances where you  
13 performed some type of round or head count where  
14 you either viewed Mr. Peterson or were in his  
15 area, the common area.

16 Do you recall anything specifically  
17 about Mr. Peterson in terms of his demeanor or  
18 personality?

19 A. I remember he would always ask if it was  
20 time to eat.

21 Q. Were you aware that he had a mental  
22 condition?

23 A. I was not aware, but I had an idea.

24 Q. What do you mean by that, just so I  
25 understand what you mean?

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1           A.     Isolation is normally where we put the  
2     people with behavior issues and mental health  
3     issues.

4           Q.     So it was safe to assume that if  
5     Mr. Peterson was in isolation, he probably had  
6     one of those two issues?

7           A.     Yes.

8           Q.     And is it your testimony that from  
9     dealing with Mr. Peterson it was your position  
10    that he had more of a mental health issue rather  
11    than a behavior issue or --

12               MR. SHEETS:   Objection.   You can answer.  
13   BY MR. CAMPINHA-BACOTE:

14           Q.     Or feel free to clarify.

15           A.     It was more a matter of process of  
16    elimination.   The ones with behavioral issues  
17    are -- excuse my language -- assholes, and  
18    Mr. Peterson did not act out in that manner, as I  
19    recall.

20           Q.     So as far as in terms of your dealings  
21    with him, he wasn't an asshole, and he  
22    wasn't -- he didn't have any behavioral issues  
23    with you personally; is that a correct statement?

24           A.     Yes.

25           Q.     Okay.   Would you describe Mr. Peterson

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1 as difficult to deal with?

2 A. I never actually had to deal with him,  
3 because it was -- third shift is lockdown. I  
4 would go through -- when I would do the security  
5 checks, he would call out, "Hey, is it time to  
6 eat yet?" And I would say, "No, you have three  
7 hours left" or, "No, you have two hours left," or  
8 give him the countdown.

9 Q. So you never had any real problems with  
10 Mr. Peterson?

11 A. No, I did not.

12 Q. And just so I understand what hours  
13 third shift are, can you tell me what hours they  
14 are?

15 A. It's from 11:00 p.m. until 7:00 a.m.

16 Q. Okay. And also regarding how you  
17 conduct your job duties, when you're performing  
18 either rounds or head counts, during those hours,  
19 I imagine that some inmates are sleeping during  
20 those hours; is that correct?

21 A. That is correct.

22 Q. How do you ensure the safety and  
23 wellbeing of the inmates if they're sleeping at,  
24 let's say, 4:00 in the morning?

25 MR. SHEETS: Objection.

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1 BY MR. CAMPINHA-BACOTE:

2 Q. You can answer.

3 A. I actually look in to see if they're  
4 still there. I don't actually wake them up to  
5 ask them if they're still alive or anything.

6 Q. Okay. And when you perform that duty,  
7 are you standing inside the common area or  
8 outside looking through the door window or does  
9 it depend?

10 A. For the single cells?

11 Q. For isolation, correct.

12 A. Yes, for the single cells, there is one  
13 common area, and then the single cells are locked  
14 up inside the common area, so you can be in the  
15 common area and not actually be inside the cell  
16 with the inmate.

17 Q. Correct. So let's take, for example,  
18 rounds. When you're performing rounds, how do  
19 you conduct them?

20 A. I conduct the security checks, I just --  
21 they're actually key punches to signify where  
22 you've been. So I'll start off with the first  
23 key punch, which is at 1 South 11. I'll look  
24 inside the dorm to see if everybody is still  
25 there. Then I'll continue to 1 South 9, which is

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1 a single cell. I would go into the common area  
2 and look into A, B, and then C.

3 Q. 1 South 9, sorry to interrupt, is that  
4 where Mr. Peterson was held?

5 A. No, Mr. Peterson I believe was in 1  
6 South 2.

7 Q. Okay. Continue.

8 A. To clarify, isolation is not all single  
9 cells. There are open doors. It was the  
10 medical -- or the medical wing. 1 South 11 is an  
11 open dorm. 1 South 9 is a single cell dorm.  
12 Then after I would exit 1 South 9, I would look  
13 into 1 South 7 again to make sure everybody is  
14 there, nobody's bleeding or trying to hurt each  
15 other.

16 I proceed down the hallway to 1 South 4,  
17 which is an open dormitory, again look inside to  
18 see if everybody is there, and then I would  
19 proceed into 1 South 2, which is a single cell  
20 dormitory, and I would go into the common area  
21 and I would look into the windows to make sure  
22 everybody was still there.

23 And I would exit 1 South 2, continue  
24 down the hallway to 1 South 3 and 5, both of  
25 which are single cell, and I would proceed into

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1     5, look into the single cells, exit 5 and enter  
2     3, go into the common rea, look into the single  
3     cells, and then go to 1 South 1, which is at the  
4     L in the hallway. That's also a single cell  
5     dormitory, so I could enter the common area  
6     there, and I would look into the single cells.

7           Q.     About how long would that take to do all  
8     of that?

9           A.     That, about eight to ten minutes.

10          Q.     Okay. So pretty quick?

11          A.     Yes.

12          Q.     How many rounds do you have to do during  
13     your shift?

14          A.     We're required to do one round per hour.

15          Q.     One round per hour. Was that a  
16     requirement during the time period of Mr. Edward  
17     Peterson's stay?

18          A.     Yes.

19          Q.     Okay. Now, when you entered the common  
20     area of -- let's just focus on 2 where  
21     Mr. Peterson was being held. You would enter the  
22     common area, correct?

23          A.     That is correct.

24          Q.     Would you walk up to the cell door and  
25     look in or what specifically would you do to

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1 ensure that the inmates were safe, sound, and not  
2 in any type of medical condition?

3 MR. SHEETS: Objection.

4 BY MR. CAMPINHA-BACOTE:

5 Q. You can answer. Unless your attorney  
6 instructs you not to answer, you can answer.

7 A. I would focus on the security, like if  
8 they were hanging, then yes, I would do something  
9 about it, but if they were in their bed laying  
10 down, I would assume they were asleep and  
11 continue.

12 Q. So you wouldn't, like, bang on the door  
13 or anything like that and make sure they woke up  
14 real quick and then -- and then went back; you  
15 would just take a look through the cell and make  
16 sure that they were not doing anything  
17 suspicious?

18 A. Correct.

19 Q. Okay. Now, walk me through the head  
20 counts. I understand you had to do three of them  
21 during your shift, correct?

22 A. That is correct.

23 Q. Okay. How did that differ, if at all,  
24 from conducting rounds in terms of what you did?

25 A. For the head count, you physically enter

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1 the dorm and count the individuals. For single  
2 cells, it's obviously easy. They're in single  
3 cells, they're by themselves. For the third  
4 count is normally doing tray pass. We'll have  
5 the flow counts in front of us so we can identify  
6 them as we hand them a tray. And then the third  
7 would be after I took them to court, I would come  
8 back through.

9 Q. So again, same question. Would you go  
10 up to the individual cell door and get a response  
11 from the inmate side or would you again just  
12 visibly observe?

13 A. From the beginning head count and the  
14 ending head count, I would observe. For the tray  
15 pass head count, I likely have them to respond to  
16 me to get the food.

17 Q. Because you're handing a tray of food to  
18 them, correct?

19 A. Correct.

20 Q. Okay. Understood.

21 Do you know who makes the determination  
22 of who goes into isolation?

23 A. That would depend on either Doug Hahn or  
24 the supervisor, the shift supervisor.

25 Q. And the shift supervisor being -- is it



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1 many people or is it a certain person?

2 A. It would be whoever the -- well, the  
3 shift supervisor would be either be the  
4 lieutenant or the sergeant or the highest ranking  
5 supervisor in the facility.

6 Q. And that changed --

7 A. On that shift.

8 Q. On a day-to-day basis, that changed?

9 A. That changed, yes.

10 Q. Now, you talked a little bit about the  
11 layout of the cells in isolation, specifically  
12 referring to IS2 where Mr. Peterson was being  
13 held. Where exactly, if you can recall, was  
14 Mr. Peterson's cell located? And for point of  
15 reference, if you want to talk from the point of  
16 view of the door that you enter into the common  
17 area.

18 A. As I enter in the common area, I'm not  
19 exactly sure, I think it was the third door in.

20 Q. On the left or the right?

21 A. On the left.

22 Q. Okay. In your opinion, if you were to  
23 stand outside the door leading into the common  
24 area, could you view Mr. Peterson's cell from  
25 that standpoint, from that perspective?

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1           A.     If I'm standing outside 2, yes, you  
2     could see his cell.

3           Q.     How much of his cell, if you could  
4     estimate, could you see?

5           A.     You could see the cell door, and there  
6     is three window slots, and you can see the  
7     wall -- well, it would be from an angle.

8           Q.     So there was a slight angle because this  
9     is the third one on the left, correct?

10          A.     Correct.

11          Q.     So if you had to approximate, and if you  
12     don't feel comfortable giving me an answer just  
13     let me know, but what percentage of the cell, for  
14     example, was not viewable from that standpoint?

15          A.     Couldn't tell you.

16          Q.     Could you see over half the inside of  
17     the cell from standing outside the door?

18                 MR. SHEETS: Objection. You can answer.

19                 THE WITNESS: You couldn't see half the  
20     cell.

21     BY MR. CAMPINHA-BACOTE:

22          Q.     Okay. So less than half?

23          A.     Yes.

24          Q.     So theoretically if an inmate such as  
25     Mr. Peterson were standing in the half of the

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1 cell that you couldn't see, then there would be  
2 no way of ensuring whether or not he was safe?

3 MR. SHEETS: Objection. You can answer.

4 THE WITNESS: No, you couldn't be  
5 able -- if you couldn't see him, you couldn't  
6 guarantee his safety.

7 BY MR. CAMPINHA-BACOTE:

8 Q. Now, let's talk about the two instances  
9 where you stated previously that you cleaned  
10 Mr. Peterson's cell.

11 Can you recall cleaning Mr. Peterson's  
12 cell?

13 A. I don't recall stating that I cleaned  
14 his cell.

15 Q. Okay. I'm sorry. Let me rephrase.

16 Do you recall seeing Mr. Peterson's cell  
17 in a condition that needed to be cleaned?

18 MR. SHEETS: Objection. You can answer.

19 THE WITNESS: I've seen his cell messy  
20 but nothing dire requiring immediate action.

21 BY MR. CAMPINHA-BACOTE:

22 Q. Okay. And when you sat down for your  
23 interview with Sergeant D'Errico, did he show you  
24 pictures of Mr. Peterson's cell?

25 A. Yes.

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1           Q.     Okay. Do you recall if those pictures  
2     were black and white or in color?

3           A.     I believe they were in color.

4           Q.     They were in color.

5           MR. CAMPINHA-BACOTE: Can we mark this  
6     as an exhibit?

7                                 - - -

8           Thereupon, Exhibit No. 12 was marked for  
9     purposes of identification.

10                                - - -

11           MR. CAMPINHA-BACOTE: I'll hand this to  
12     you first, Scott. It's what you gave me moments  
13     ago. Do you want to take a look? I don't think  
14     there were copies made.

15           MR. YOSOWITZ: I've seen them, I think.

16           MR. CAMPINHA-BACOTE: We'll make copies  
17     at the end, if you like.

18           MR. SHEETS: That's fine.

19     BY MR. CAMPINHA-BACOTE:

20           Q.     Mr. Neely, I'm handing you what's been  
21     marked as Exhibit 12, if you can just take a look  
22     through all of those photos, and let me know if  
23     any of those photos were the ones that you saw  
24     when you were interviewed by Sergeant D'Errico.

25           A.     I believe these two (indicating).

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1           Q.     Okay.  These two right here  
2     (indicating)?

3           A.     Correct.

4           MR. CAMPINHA-BACOTE:  I'm going to mark  
5     these for the record.  Please let the record  
6     reflect that Mr. Neely is referring to Pages 3  
7     and 4 of Exhibit 12.

8           MR. SHEETS:  One second.  These aren't  
9     stapled, so we probably ought to staple them now  
10    since you're referring to Page 3 and 4, and  
11    they're just paper clipped because if they get  
12    mixed up --

13          MR. CAMPINHA-BACOTE:  Sure, and I'll  
14    also put Pages 3 and 4 on there.

15   BY MR. CAMPINHA-BACOTE:

16          Q.     Mr. Neely, I've written Page 3 and  
17    Page 4 on the two pictures you've identified.

18                 Can you just confirm real quick for the  
19    record that those are the two pictures that  
20    you've identified as seeing when you were  
21    interviewed by Sergeant D'Errico?

22          A.     They are.

23          Q.     Do you recall what your testimony was  
24    when you spoke to Mr. D'Errico -- or Sergeant  
25    D'Errico about whether or not this was the

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1 condition that you viewed Mr. Peterson's cell in  
2 when you conducted rounds or head count?

3 MR. SHEETS: Objection. You can answer.

4 THE WITNESS: I do not recall.

5 BY MR. CAMPINHA-BACOTE:

6 Q. Okay. That's fine. Remembering back in  
7 terms of the condition of Mr. Peterson's cell,  
8 what's your opinion on the condition of that  
9 cell?

10 MR. SHEETS: Objection.

11 MR. YOSOWITZ: Objection.

12 MR. SHEETS: You can answer.

13 BY MR. CAMPINHA-BACOTE:

14 Q. You can answer.

15 MR. SHEETS: Sorry.

16 THE WITNESS: My opinion would be that  
17 it was messy.

18 BY MR. CAMPINHA-BACOTE:

19 Q. Did it look like a condition similar to  
20 Page 3 and 4 of Exhibit 12?

21 MR. SHEETS: Objection. You can answer.

22 THE WITNESS: No.

23 BY MR. CAMPINHA-BACOTE:

24 Q. No in terms of it was messier or not as  
25 messy?

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1           A.    No, it was not as messy.

2           Q.    Do you feel that Mr. Peterson's cell  
3    when you witnessed it was in an acceptable  
4    condition?

5                   MR. SHEETS:  Objection.  You can answer.

6                   THE WITNESS:  No, I did not.

7   BY MR. CAMPINHA-BACOTE:

8           Q.    In fact, that's what you stated to  
9    Sergeant D'Errico, correct?

10          A.    I don't --

11          Q.    You don't recall?

12          A.    No.

13          Q.    That's fine.  So when you found -- let  
14   me back up.

15                   Can you remember the dates and/or date  
16   that you found Mr. Peterson's cell in -- I'll use  
17   your words -- in unacceptable condition?

18                   MR. SHEETS:  Objection.

19                   THE WITNESS:  No, I can't remember the  
20   dates.

21   BY MR. CAMPINHA-BACOTE:

22          Q.    Okay.  Do you remember what you did when  
23   you found his cell in the condition you stated  
24   you found it in?

25          A.    When I would see his cell was messy, I

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1 would just pass it on to first shift to say hey,  
2 he needs to sweep it out.

3 Q. Okay. And why did you do that? Why  
4 would you pass it on to first shift as opposed to  
5 cleaning it yourself?

6 A. Issues of security and manpower. I  
7 worked isolation by myself, and it wasn't  
8 imperative because it wasn't life-threatening, so  
9 I would pass it on to first shift that was better  
10 staffed and able to handle it.

11 Q. Could you have taken care of the  
12 situation if you wanted to?

13 A. In violation of our procedures, yes, I  
14 could have.

15 Q. What do you mean by "in violation of our  
16 procedures"?

17 A. Third shift is lockdown. We're not to  
18 have any inmates out unless they're going to  
19 medical or being released. For me to enter that  
20 cell, I wouldn't have a supervisor present, and I  
21 couldn't do that.

22 Q. Could you have asked for a supervisor to  
23 accompany you?

24 A. Yes, I could have.

25 Q. And in that situation, to the best of



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1 your memory, why didn't you call a supervisor?

2 A. Like I said, due to staffing, we're very  
3 short-staffed, and that was not a very high  
4 priority.

5 Q. So you had other priorities at the time?

6 A. Correct.

7 Q. Okay. Do you recall whether or not  
8 Mr. Peterson had a mattress in his cell when you  
9 went in?

10 A. When I went in to do --

11 Q. Not went in, but when -- this  
12 circumstance that you're referencing, do you  
13 recall if Mr. Peterson had a mattress?

14 A. Okay. You got to be a little bit more  
15 specific.

16 Q. Let me narrow the time frame, I'm so  
17 sorry.

18 You stated that there was at least one  
19 or two occasions where you witnessed  
20 Mr. Peterson's cell in an unacceptable condition,  
21 correct?

22 MR. SHEETS: Objection. You can answer.

23 THE WITNESS: It was messy, yes.

24 BY MR. CAMPINHA-BACOTE:

25 Q. Well, you said it was not acceptable,

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1 correct? You said that his cell was not  
2 acceptable, the condition of his cell?

3 MR. SHEETS: Objection. You can answer.

4 THE WITNESS: Okay. When did I say it  
5 was not acceptable?

6 BY MR. CAMPINHA-BACOTE:

7 Q. Moments ago, I asked you if you thought  
8 the condition of Mr. Peterson's cell was  
9 acceptable, and you said no.

10 A. Okay.

11 Q. On those instances that you're referring  
12 to when you saw Mr. Peterson's cell and it was  
13 not acceptable to you, do you recall there being  
14 a mattress in Mr. Peterson's cell?

15 A. I recall two instances where he did not  
16 have a mattress in his cell.

17 Q. Okay. And what did you do when you  
18 discovered that?

19 A. On both instances I gave him a mat.

20 Q. Okay. Did you document this?

21 A. I did not document it.

22 Q. And why didn't you document this?

23 A. It was something you do during the day.  
24 I saw a problem, corrected it, and kept on  
25 moving.

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1           Q.    I'm going to back up just a quick second  
2   with respect to the condition of Mr. Peterson's  
3   cell.  You told me moments ago that you would  
4   pass on to first shift because you were  
5   understaffed and things of that nature.

6                   In those circumstances, do you know if  
7   first shift actually cleaned up the mess that was  
8   in Mr. Peterson's cell?

9                   MR. SHEETS:  Objection.  You can answer.

10                  THE WITNESS:  I do not know.

11   BY MR. CAMPINHA-BACOTE:

12           Q.    Did you relay the information to  
13   first -- to staff on first watch?

14           A.    Yes, I verbally passed it on.

15           Q.    Do you recall in either instance who you  
16   passed it on to?

17           A.    No, I do not.

18           Q.    Would it help if you took a look at the  
19   schedule as to who was working first shift as to  
20   names of who you passed it on to?

21           A.    Possibly if the schedule is correct,  
22   then yeah.

23           Q.    Okay.  If you want to go back to  
24   Exhibit 2 and turn to Page 7, and you can see  
25   that, again, there were 16 instances where you

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1     were assigned to isolation post, and if you can  
2     look through and see if this schedule helps  
3     refresh your recollection as to who you reported  
4     the condition of Mr. Peterson's cell to.

5             MR. SHEETS: I'm going to object. I  
6     don't have a problem with the question at all,  
7     but we don't know if this is accurate. He's  
8     testified he doesn't remember. That's the only  
9     basis.

10    BY MR. CAMPINHA-BACOTE:

11            Q.     That's fine. To the best of your  
12     memory.

13            A.     I do not recall, because I don't really  
14     know the dates.

15            Q.     That's fine. That's fine.

16                    Now, in terms of the mess that was in  
17     Mr. Peterson's cell, can you recall exactly what  
18     was in his cell that made you think it was messy?

19            A.     He had torn up Styrofoam trays.

20            Q.     I imagine that was from lunch from tray  
21     pass from the --

22            A.     That was from tray pass.

23            Q.     Okay. Anything else?

24            A.     I don't remember now.

25            Q.     What about food on the ground?

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1           A.    No, I don't remember.

2           Q.    What about liquid, whether that's  
3 something like spilled milk or something like  
4 urine, or vomit?

5           A.    I don't know.

6           Q.    What about feces?

7           A.    No.

8           Q.    Was there an odor coming from the cell  
9 when you observed that it was messy?

10          A.    I don't remember.

11          Q.    So just so I can understand what you  
12 meant by it was messy and unacceptable, if it was  
13 just Styrofoam or stuffing, what about that made  
14 it unacceptable to you?

15          A.    Because it's not neat, it's not clean.

16          Q.    And do you recall if it was just one  
17 instance that he didn't have a mattress or was it  
18 your testimony there was two instance?

19          A.    There was two instances.

20          Q.    And on both times you personally made  
21 sure that you got him --

22          A.    I gave him a mattress, yes.

23          Q.    You stated a little while ago that one  
24 of the things that you could have done with  
25 respect to cleaning up Mr. Peterson's cell was to

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1     notify a supervisor. You told me that you didn't  
2     think that was necessary. But could you have  
3     done anything else like notify the cleaning crew?

4             MR. SHEETS: Objection. You can answer.

5             THE WITNESS: With our staffing  
6     shortage, I don't believe we had a cleaning crew  
7     in.

8     BY MR. CAMPINHA-BACOTE:

9             Q. Without staffing shortage?

10            A. With our staffing shortage.

11            Q. Okay.

12            A. Because we were short-staffed for the  
13     longest time actually.

14            Q. Can you recall on any of the dates that  
15     you were working in Exhibit 2, Pages 7 and 8,  
16     whether or not for sure there was a staff  
17     shortage?

18            A. On third shift, yes.

19            Q. And which dates, or all?

20            A. We actually had been short-staffed until  
21     the recent hiring group that was last June -- was  
22     that last June -- no, February. Until then we  
23     were operating on a short staff.

24            Q. Now, when you say short-staffed, does  
25     that mean if there was an issue such as cleaning

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1 a cell or something like that, that they won't be  
2 able to get to it or it's just more difficult for  
3 them to get to it?

4 MR. SHEETS: Objection. You can answer.

5 THE WITNESS: When we're short-staffed,  
6 our focus is on the security and the superfluous  
7 items like the cleaning crew and things are just  
8 put off.

9 BY MR. CAMPINHA-BACOTE:

10 Q. Okay. I'm going to ask you a general  
11 opinion just to get your opinion.

12 A. Sure.

13 Q. Do you think there would ever be a  
14 situation where an inmate's cell is so unclean or  
15 messy that it could pose a safety concern?

16 MR. SHEETS: Objection.

17 MR. YOSOWITZ: Objection.

18 THE WITNESS: No.

19 BY MR. CAMPINHA-BACOTE:

20 Q. Let's take Exhibit 12. This condition  
21 right here, do you think that this could pose a  
22 safety concern to any inmate?

23 MR. SHEETS: Objection. You can answer.

24 THE WITNESS: No, just sweep it out.

25 BY MR. CAMPINHA-BACOTE:

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1           Q.    Okay.  Were you aware that in this  
2           circumstance an actual bio alert was issued  
3           because of that condition of the cell?

4           A.    No.

5                   MR. SHEETS:  Objection.  You can answer.

6                   THE WITNESS:  No.

7   BY MR. CAMPINHA-BACOTE:

8           Q.    You were not aware?

9           A.    I was not aware.

10          Q.    Okay.  Would you agree to the best of  
11          your knowledge, I'm not saying you're a doctor or  
12          anything like that, that a bio alert is probably  
13          something serious in terms of safety and health?

14                   MR. SHEETS:  Objection.

15                   MR. YOSOWITZ:  Objection.

16                   MR. SHEETS:  You can answer.

17                   THE WITNESS:  I have no idea what a bio  
18          alert is, so no, I couldn't tell you.

19   BY MR. CAMPINHA-BACOTE:

20          Q.    Okay.  So just so I understand your  
21          testimony here today, it's that with respect to  
22          the cleanliness of a cell, there is no amount of  
23          uncleanness that could pose a safety issue for an  
24          inmate?

25                   MR. SHEETS:  Objection.  You can answer,



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1 if you now.

2 THE WITNESS: Honestly say, not really.

3 BY MR. CAMPINHA-BACOTE:

4 Q. Okay. What about with respect to the  
5 objects that staff gives inmates such as  
6 utensils, mattresses, things like that, could  
7 usage of those items ever pose a security issue?

8 MR. SHEETS: Objection.

9 THE WITNESS: Yes.

10 BY MR. CAMPINHA-BACOTE:

11 Q. Okay. So you would admit that it is  
12 possible for an inmate to pose a safety issue to  
13 himself given the items he receives during his  
14 care?

15 MR. SHEETS: Objection. The previous  
16 question said security issue, but you can answer.

17 THE WITNESS: A matter of security, yes,  
18 the inmate can use those items. A measure of  
19 safety, I don't think so, no.

20 BY MR. CAMPINHA-BACOTE:

21 Q. And just so I understand what you mean  
22 by "safety," what do you mean?

23 A. By "safety," I mean, well, the inmate  
24 posing a threat to themselves, no.

25 Q. Okay. And "security," how are you

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1 defining that?

2 A. Security as in the security of the  
3 facility, preventing us from actually checking on  
4 them to make sure they're still in the cell or  
5 things of that nature.

6 Q. Okay. So when you state that yes, it  
7 could provide -- cause a security issue, what  
8 specifically are you referring to?

9 A. Security, specifically they can use  
10 instruments to stuff the locks or break out the  
11 windows.

12 Q. Okay. Referring back to the pictures  
13 that are before you, Page 3 and Page 4, does it  
14 surprise you that the cell was in this condition  
15 on September 4th, 2011?

16 MR. YOSOWITZ: Objection.

17 MR. SHEETS: You can answer.

18 THE WITNESS: No, not really.

19 BY MR. CAMPINHA-BACOTE:

20 Q. And why does that not surprise you?

21 A. Because Mr. Peterson would tear up his  
22 trays.

23 Q. But you would acknowledge here that it's  
24 more than just torn-up trays?

25 MR. SHEETS: Objection.

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1 BY MR. CAMPINHA-BACOTE:

2 Q. Or is it your position here that these  
3 are just pictures of torn-up trays?

4 A. I can see more than torn-up trays.

5 Q. Okay. And let me just -- just so I can  
6 have your observations on record, what all do you  
7 see in this picture?

8 A. I see torn-up trays, milk carton, it  
9 looks like a wrapper of some sort, a blanket, and  
10 stains on the floor.

11 Q. Can you depict or discern what those  
12 stains are from?

13 MR. SHEETS: Objection.

14 THE WITNESS: No, I cannot.

15 BY MR. CAMPINHA-BACOTE:

16 Q. Okay. Anything else?

17 A. That's it.

18 Q. What about looking at any other pictures  
19 in terms of what you can notice, anything else?

20 A. From the top pictures, like food around  
21 the toilet.

22 Q. Does that look like food or feces?

23 MR. SHEETS: Objection. You can answer.

24 THE WITNESS: It looks like food.

25 BY MR. CAMPINHA-BACOTE:

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1 Q. Okay.

2 A. Right here, on the toilet bowl?

3 Q. Um-hmm.

4 A. It looks like food.

5 Q. Okay. Anything else in the pictures?

6 A. That is all.

7 Q. Now, you stated that -- strike that.

8 The instances that you observed

9 Mr. Peterson's cell in the condition you  
10 described earlier, did you actually enter the  
11 cell?

12 A. Enter into his cell?

13 Q. Correct.

14 A. No, I did not.

15 Q. Was his cell ever opened?

16 MR. SHEETS: Objection. You can answer.

17 THE WITNESS: Yes, when I -- both  
18 instances when I gave Mr. Peterson a bath, I  
19 opened his door to do so.

20 BY MR. CAMPINHA-BACOTE:

21 Q. What about during tray pass, did you  
22 have his cell door open to do that?

23 A. No, we do food tray pass through the  
24 food traps located inside the doors.

25 Q. Gotcha. So even though you did tray

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1 pass rounds or a head count 16 times according to  
2 the schedule, only two of those instances you  
3 actually opened -- had the door opened?

4 A. Correct.

5 Q. Okay. Did any other deputy or  
6 supervisor inform you of the condition of  
7 Mr. Peterson's cell?

8 MR. SHEETS: Objection.

9 THE WITNESS: Not that I recall, no.

10 BY MR. CAMPINHA-BACOTE:

11 Q. No one else told you it was in a bad  
12 condition?

13 A. No, not that I remember, no.

14 Q. When you observed it in a not acceptable  
15 condition at some point in time during your  
16 shifts, that was the first time you had been made  
17 aware of that?

18 MR. SHEETS: Objection. You can answer.

19 THE WITNESS: When I would go through  
20 and see it, yes.

21 BY MR. CAMPINHA-BACOTE:

22 Q. Right. So prior to -- let's take the  
23 first time you saw this cell as being in a bad  
24 condition or an unacceptable condition. Prior to  
25 that first time, had you ever been made aware of

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1 the condition of Mr. Peterson's cell?

2 MR. SHEETS: Objection. You can answer.

3 THE WITNESS: Are you asking me if  
4 someone said, "Hey, Neely, his cell needs to be  
5 cleaned out"?

6 BY MR. CAMPINHA-BACOTE:

7 Q. Something like that.

8 A. Not that I can recall, no.

9 Q. Or something like, "Hey, Peterson's got  
10 a, you know, pretty bad cell, someone should  
11 clean it up"?

12 A. Not that I recall, no.

13 Q. And the difference between those two  
14 statements, just so you're clear, I'm not  
15 asking -- I'm not limiting that question to  
16 someone actually telling you. You could also  
17 have overheard something about the cleanliness of  
18 Mr. Peterson's cell with other deputies.

19 So none of that, as far as you know?

20 A. No.

21 Q. What about with respect to the mattress,  
22 had you ever heard of Mr. Peterson being without  
23 a mattress apart from your physical and personal  
24 observations?

25 A. No.

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1 Q. Anyone else with you when you observed  
2 Mr. Peterson's mattress not being in the cell?

3 A. No.

4 Q. And, again, going back to when you  
5 personally saw Mr. Peterson's cell in a not  
6 acceptable condition, on a scale of one to ten,  
7 one being clean, ten being extremely messy, in  
8 your opinion, how would you rank that?

9 MR. SHEETS: Objection. You can answer.

10 THE WITNESS: My personal opinion, I  
11 rate it about a three.

12 BY MR. CAMPINHA-BACOTE:

13 Q. A three meaning?

14 A. Three as in level of messiness, not  
15 really high, because when I saw it, it was just  
16 pieces of Styrofoam.

17 Q. Okay. Do you report to your supervisor  
18 cells that are fairly clean?

19 MR. SHEETS: Objection.

20 MR. YOSOWITZ: Objection.

21 MR. SHEETS: You can answer.

22 THE WITNESS: No.

23 BY MR. CAMPINHA-BACOTE:

24 Q. Okay. Yet in this circumstance, you  
25 thought that it merited a heads-up to the first

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1 staff -- to the first shift staff?

2 A. Correct.

3 Q. So would it be safe to say then that  
4 anything that would be on a three to ten on your  
5 scale of messiness would warrant telling the  
6 supervisors that, "Hey, this cell needs to be  
7 cleaned"?

8 MR. SHEETS: Objection. You can answer  
9 if you understand.

10 THE WITNESS: I understand your question  
11 to be if I ever see a cell that's messy, will I  
12 pass it on to first shift? Yes, I would.

13 BY MR. CAMPINHA-BACOTE:

14 Q. Okay. So let's just say in the  
15 situation you gave, if a cell was a level one in  
16 terms of messiness, would you report that to your  
17 supervisor?

18 A. No.

19 Q. What about a level two?

20 A. No.

21 Q. But you're saying a level three and  
22 above you would?

23 MR. SHEETS: Objection. You can answer.

24 THE WITNESS: I would not report it to  
25 my supervisor. I would report it to the deputies



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1     that are relieving me because they could handle  
2     it because they do the cleaning supplies.

3     BY MR. CAMPINHA-BACOTE:

4           Q.     Okay. Same question just so we're  
5     clear. On a scale of one to ten, if it was a one  
6     or a two, would you report that off, or tip off  
7     the deputies for a one or two?

8           A.     I would pass it on if the cells were  
9     messy. I would say, hey, such and such cell's  
10    messy.

11          Q.     So no matter -- as long as there was  
12    some type of a mess there, you would pass it on?

13          A.     That is correct.

14          Q.     And that's probably a good practice,  
15    right?

16                 MR. SHEETS: Objection. You can answer.

17                 THE WITNESS: Yes.

18     BY MR. CAMPINHA-BACOTE:

19           Q.     Are you aware if any other deputies held  
20    the same belief in terms of passing on knowledge  
21    of the condition of an inmate's cell if it were  
22    unclean?

23                 MR. SHEETS: Objection. You can answer.

24                 THE WITNESS: I don't know.

25     BY MR. CAMPINHA-BACOTE:

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1           Q.    Are you aware of any other inmate's cell  
2   in isolation that had a problem with cleanliness  
3   in terms of the condition of his cell?

4           MR. SHEETS:  Objection.  You can answer.

5           THE WITNESS:  For a lot of our mental  
6   health, it's commonly messy.

7   BY MR. CAMPINHA-BACOTE:

8           Q.    Okay.  But specifically anyone that you  
9   can remember between the dates of August 5th,  
10   2011 and September 4th, 2011?

11          A.    No, not specifically.

12          Q.    Okay.  You've been at the jail for a  
13   while, right, for 15 years or so?

14          A.    15 years, yes.

15          Q.    Let's just take up until Mr. Peterson's  
16   stay which would be in 2011.  Have you ever  
17   encountered a cell that was as dirty or dirtier  
18   than Mr. Peterson's cell?

19          MR. SHEETS:  Objection.  You can answer.

20          THE WITNESS:  Yes, I have.

21   BY MR. CAMPINHA-BACOTE:

22          Q.    Okay.  And if we go back to that same  
23   scale that I gave you beforehand, one to ten, one  
24   being clean, ten being very messy, what's the  
25   messiest you've seen a cell?

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1 MR. SHEETS: Objection. You can answer.

2 THE WITNESS: In my opinion, the

3 messiest I've seen would be about seven.

4 BY MR. CAMPINHA-BACOTE:

5 Q. Okay. And describe to me what a seven  
6 would look like.

7 A. A seven would be feces on the windows,  
8 say several days of trays just torn and shredded,  
9 and food smeared on the walls.

10 Q. And you've seen that before, right?

11 A. I have seen that before.

12 Q. So you've seen several days of trays  
13 sitting in an inmate's cell and feces smeared on  
14 the wall?

15 A. Not several days of trays. Trays from  
16 several days. Let me rephrase that. They have  
17 accumulated trays over several days, and they  
18 tear those up.

19 Q. Furthering that example, how many sevens  
20 have you seen in your 15 years?

21 MR. SHEETS: Objection. You can answer.

22 THE WITNESS: I have no idea.

23 BY MR. CAMPINHA-BACOTE:

24 Q. More than ten?

25 A. I work in isolation. I would see a lot

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1 of whatever it is. I couldn't begin to tell you  
2 how many times.

3 Q. So so many you can't even really keep  
4 track of it?

5 A. That is correct.

6 Q. I understand then when we're talking  
7 about the picture identified in Exhibit 12, that  
8 this picture on Pages 3 and 4 you did not  
9 personally see? These are pictures from  
10 September 4th, 2011. You understand that,  
11 correct?

12 A. That's correct.

13 Q. Now, taking a look at these pictures,  
14 how would you rank this?

15 MR. SHEETS: Objection. You can answer.

16 THE WITNESS: I would still put it at a  
17 three.

18 BY MR. CAMPINHA-BACOTE:

19 Q. Okay. And you acknowledge there is no  
20 mattress in any of those pictures?

21 MR. SHEETS: Objection. You can answer.

22 THE WITNESS: I do not see a mattress in  
23 the pictures.

24 BY MR. CAMPINHA-BACOTE:

25 Q. Okay. And I may have asked this before,

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1 and if I did, I apologize. Were you aware of  
2 Mr. Peterson having a history of destroying his  
3 mattress?

4 A. Yes.

5 Q. You were aware, okay, I'm sorry. Tell  
6 me how you became aware of that. I know you  
7 stated that there were two separate instances  
8 where you personally witnessed him without a  
9 mattress, but anything else you want to add to  
10 your knowledge of his destroying the mattress?

11 A. Normally when they destroy a mattress,  
12 we take the mattress from them. So if a person  
13 didn't have a mattress, I'd assume that he had  
14 destroyed the previous one and get him a new one.

15 Q. So you assumed. Did you have any  
16 personal knowledge of whether or not someone  
17 actually took away Mr. Peterson's mattress for  
18 destroying it?

19 A. No, I did not have any personal  
20 knowledge of that.

21 Q. Okay. There was never an instance where  
22 second shift tipped you off and said, "Hey, by  
23 the way, I took away Peterson's mattress, I just  
24 want you to know"? Anything like that ever said  
25 to you?

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1           A.     No.

2           Q.     Okay.  If you can remember, I know again  
3     we're talking about two years ago or so, but  
4     let's talk about the time frame with  
5     Mr. Peterson's stay.

6                     Any other inmates that you're aware of  
7     that had an issue with the cleanliness of their  
8     cell during that time frame?

9                     MR. SHEETS:  Objection.  You can answer.

10                    THE WITNESS:  In my opinion, they're all  
11     messy.  So if anyone stood out, no -- anyone in  
12     particular stood out, no.

13     BY MR. CAMPINHA-BACOTE:

14           Q.     Okay.  Would you, in your opinion, say  
15     that the condition of Mr. Peterson's cell that  
16     you observed it in was on par with the other  
17     inmates in isolation in terms of cleanliness?

18                     MR. SHEETS:  Objection.  You can answer.

19                    THE WITNESS:  I would say as on par, but  
20     there were some that I considered, in my opinion,  
21     messy.

22     BY MR. CAMPINHA-BACOTE:

23           Q.     Okay.  Now, you talked about your  
24     interaction with Mr. Peterson and how he really  
25     didn't give you too much problem.  Were you aware

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1 of him giving any other deputy or staff member  
2 problems?

3 A. No.

4 Q. Okay. You stated earlier that you're  
5 familiar with who Lieutenant D'Errico is,  
6 correct?

7 A. Correct.

8 Q. What's his position? What does he do?

9 A. He's a sergeant with the internal  
10 affairs division.

11 Q. Okay. And again, you recall the  
12 interview he gave you on or around January 26th,  
13 correct?

14 A. I remember attending it, yes. Exactly  
15 what we talked about, I probably --

16 Q. Well, let's refresh your recollection.  
17 Go back to Exhibit 2, which is right in front of  
18 you, and if you can turn to Page -- I believe  
19 it's 41, but let me double-check. Actually, that  
20 was not 41. Page 10.

21 A. Okay.

22 Q. If you look, almost the middle, just a  
23 little bit underneath, you'll see your name on  
24 January 25th, 2012, "Deputy Damien Neely was  
25 interviewed." Do you see that?

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1           A.     I see that.

2           Q.     Take a moment and just read through that  
3 statement, and let me know when you're finished.

4           A.     I'm finished reading.

5           Q.     Okay. Had you ever read that before?

6           A.     No.

7           Q.     Okay. Let's take the statements that  
8 were made in that paragraph. We can go line by  
9 line if you need to, but do you disagree with  
10 anything that's stated there?

11                   MR. SHEETS: Objection. You can answer.

12                   THE WITNESS: A lot of it is personal  
13 opinion, but no, I don't.

14 BY MR. CAMPINHA-BACOTE:

15           Q.     Okay. Do you disagree with any of the  
16 personal opinions?

17           A.     No.

18           Q.     Okay. You're aware that Sergeant --  
19 excuse me -- Lieutenant D'Errico ended up  
20 recommending disciplinary action -- disciplinary  
21 action against you for what he recorded in that  
22 statement you just read, correct?

23           A.     No, I did not.

24           Q.     Okay. Well, let me show it to you. If  
25 you can turn to Page 41. Take a look at that,



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1 and let me know when you're done reading.

2 A. I'm finished reading.

3 Q. Okay. Prior to reviewing it right now,  
4 were you aware that Mr. -- excuse me --  
5 Lieutenant D'Errico recommended these three  
6 violations for your conduct concerning the time  
7 frame of Mr. Peterson's incarceration?

8 A. The exact, no. I received a letter  
9 saying that I was being considered for discipline  
10 in regards to the Peterson incident.

11 Q. And that letter was nothing you saw in  
12 this Exhibit 2 that you have in front of you?  
13 And you can take a chance to review all of it.

14 MR. SHEETS: If you wouldn't mind, when  
15 you finish with your current topic, can we take a  
16 break?

17 MR. CAMPINHA-BACOTE: Sure. Absolutely.

18 THE WITNESS: No, that was our final  
19 disposition.

20 BY MR. CAMPINHA-BACOTE:

21 Q. What was your final disposition?

22 A. After the IA investigation, I received  
23 final disposition as to whether or not I would  
24 receive discipline or not, and that was a letter.

25 Q. Okay. Understood. I think we might

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1 have that here. I'm going to refer to an  
2 exhibit. Give me two seconds.

3 All right. I'm handing you what's been  
4 marked as Exhibit 3, and I'm directing you to one  
5 of the pages in here. You take a look at that  
6 real quick, and let me know when you're done  
7 reviewing.

8 A. Okay.

9 Q. Is this that document you're referring  
10 to or was it something different?

11 A. This was the document received.

12 Q. So referring back to Page 41, which was  
13 again Lieutenant D'Errico's acknowledgments and  
14 violations of the rules in your situation, do you  
15 disagree with anything contained therein?

16 MR. SHEETS: Objection. You can answer.

17 THE WITNESS: I would say yes.

18 BY MR. CAMPINHA-BACOTE:

19 Q. You --

20 A. Disagree.

21 Q. You disagree? What do you disagree  
22 with?

23 A. It says, "failing to take immediate  
24 action" for an unclean cell as being an  
25 Inattention of duty," when I actually passed it

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1 on to someone else, so that's not neglect nor  
2 inattention. Actually, since I couldn't  
3 personally take care of it, I passed it on to  
4 someone else to take care of.

5 For nonfeasance --

6 Q. Well, let's take that one, and again,  
7 try to speak a little slower just for the court  
8 reporter.

9 A. I'm sorry.

10 MR. SHEETS: And if it's all right with  
11 you, Avonte, you asked a question. I would like  
12 him to answer that and you can break it down.

13 BY MR. CAMPINHA-BACOTE:

14 Q. Okay. Go ahead, finish answering.

15 A. For nonfeasance, same thing. I couldn't  
16 personally take care of it, but I passed it on  
17 for someone else to take care of.

18 "Organizational Authority, Responsibilities, and  
19 Duties of Supervisors and Staff," I don't even  
20 know what that means.

21 It said I "did not record and log his  
22 activity during his tour of duty in the  
23 prescribed manner..." The prescribed manner,  
24 we're supposed to log our security checks and  
25 significant events. A dirty cell is not a

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1 significant event.

2 Q. Can a dirty cell ever be a significant  
3 event?

4 A. No.

5 Q. Even if it was a level seven as we  
6 talked about before, would that be a significant  
7 event?

8 MR. SHEETS: Objection. You can answer.

9 THE WITNESS: If it was that bad, I  
10 would notify the supervisor, but I didn't see  
11 anything like that.

12 BY MR. CAMPINHA-BACOTE:

13 Q. I understand you may not have seen it,  
14 but my question is whether or not that would be a  
15 significant event.

16 A. No, I still wouldn't log it in the book.  
17 Well, I would notify my supervisor, but I  
18 wouldn't log it in the book.

19 Q. What if it was a level ten?

20 A. Still notify the supervisor, it was just  
21 a dirty cell.

22 Q. Let's take these one by one. With  
23 regard to the Neglect Or Inattention to Duty,  
24 AR102:9/102:43, you at least acknowledge the  
25 fact, and we talked about this earlier, that

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1 Mr. Peterson's cell was in a bad condition?

2 MR. SHEETS: Objection.

3 BY MR. CAMPINHA-BACOTE:

4 Q. Correct.

5 A. I agree that it's messy.

6 Q. Well, you actually said the words "bad."

7 MR. SHEETS: Objection. No, he didn't.

8 You can answer.

9 MR. CAMPINHA-BACOTE: Again, no speaking  
10 objections.

11 BY MR. CAMPINHA-BACOTE:

12 Q. But, again, you acknowledge it was a  
13 bad -- the condition of the cell was in bad  
14 condition, correct?

15 MR. SHEETS: Objection. You can answer.

16 THE WITNESS: I agree it was messy, yes.

17 BY MR. CAMPINHA-BACOTE:

18 Q. Okay. Is it your position here today  
19 that it was not bad?

20 MR. SHEETS: Objection. You can answer.

21 THE WITNESS: I think it was messy.

22 BY MR. CAMPINHA-BACOTE:

23 Q. I'm sorry, that's not answering my  
24 question. "Yes" or "no", do you --

25 A. Bad, in my personal opinion, was it bad?

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1 Not as bad as I've seen before. But was it  
2 messy? Yes.

3 Q. Right, and again, that's not really  
4 responsive to my question. The question was  
5 whether or not you feel the condition of the cell  
6 was in a bad condition.

7 I understand that there might be worse  
8 or better, you know, different circumstances, but  
9 was the condition of Mr. Peterson's cell bad when  
10 you observed it?

11 MR. SHEETS: Objection.

12 THE WITNESS: In my personal opinion,  
13 yes, it was bad.

14 BY MR. CAMPINHA-BACOTE:

15 Q. Okay. Now, I understand that you  
16 disagree with the fact that you violated that  
17 rule, but in terms of that statement, "Deputy  
18 Neely was neglectful for knowing that  
19 Mr. Peterson's cell was in a 'bad' condition and  
20 failing to take immediate action," is there  
21 anything factual about that statement that is not  
22 accurate?

23 MR. SHEETS: Objection.

24 MR. YOSOWITZ: Objection.

25 THE WITNESS: I didn't understand that

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1 question.

2 BY MR. CAMPINHA-BACOTE:

3 Q. Is there anything factual about that  
4 question that is not accurate? And we can break  
5 it apart if you want to.

6 A. Please.

7 Q. Let's take the "'bad' condition". You  
8 acknowledge, as we've been over several times, it  
9 was in bad condition.

10 The second part, "failing to take  
11 immediate action," is that incorrect to state  
12 that you failed to take immediate action?

13 MR. YOSOWITZ: Objection.

14 MR. SHEETS: Objection. You can answer.

15 THE WITNESS: Immediate as in -- I mean,  
16 like that instant immediate or --

17 BY MR. CAMPINHA-BACOTE:

18 Q. Well, I'm not -- you know, I didn't  
19 write the words "immediate action." I'm just  
20 going off of your understanding of the word  
21 "immediate."

22 Do you think it's incorrect to say that  
23 you failed to take immediate action?

24 A. I would say yes, it's incorrect.

25 Q. Okay. Let's go with the second one.

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1           MR. YOSOWITZ: Are we going to take a  
2 break?

3           MR. CAMPINHA-BACOTE: You said after I  
4 finish this topic.

5           MR. YOSOWITZ: You said after his  
6 question.

7           MR. CAMPINHA-BACOTE: You said topic.

8           MR. SHEETS: That's fine as long as  
9 you --

10          MR. CAMPINHA-BACOTE: I don't have much  
11 more on this topic.

12          MR. SHEETS: Okay, that's fine.

13          MR. CAMPINHA-BACOTE: Probably two  
14 minutes.

15          MR. SHEETS: That's fine.

16 BY MR. SHEETS:

17          Q. Nonfeasance, the middle paragraph.

18                Do you see that?

19          A. I see that.

20          Q. Okay. Let's just concentrate on the  
21 words "by ignoring the condition of  
22 Mr. Peterson's cell and not taking immediate  
23 action." Same question. Would you take issue  
24 with anything factual in that statement?

25          MR. SHEETS: Objection. You can answer.



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1           THE WITNESS: Correct. They said I did  
2 not take any action. I notified first shift who  
3 were responsible for handing out cleaning  
4 supplies.

5 BY MR. CAMPINHA-BACOTE:

6           Q. Okay. And it's your position that  
7 that's taking immediate action?

8           A. That is an action, yes.

9           Q. I know it's an action.

10          A. It is.

11          Q. But it's your conclusion that's an  
12 immediate action?

13               MR. SHEETS: Objection. You can answer.

14               THE WITNESS: Yes.

15 BY MR. CAMPINHA-BACOTE:

16          Q. Okay. And then the last one,  
17 "Organizational Authority, Responsibilities, and  
18 Duties of Supervisors and Staff," I'll read it.  
19 "Deputy Neely did not record and log his activity  
20 during his tour of duty in the prescribed manner  
21 when he observed Mr. Peterson without a  
22 mattress."

23               You will acknowledge that you did not  
24 record and log this activity, correct?

25          A. That is correct.

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1           Q.    Okay. With respect to -- actually,  
2    strike that.

3                    So would you, therefore, have any issue  
4    with the recommended violation here?

5                   MR. SHEETS:  Objection.  You can answer.

6                   THE WITNESS:  I disagree with that also.  
7    BY MR. CAMPINHA-BACOTE:

8           Q.    Okay. What part do you disagree with?

9           A.    It says that I did not record or log  
10   this activity in his tour of duty in the  
11   prescribed manner.  There is no prescribed  
12   manner.

13          Q.    And what do you mean by that?  I just  
14   want to understand what you mean.

15          A.    For our log-ins, as I stated earlier, in  
16   our logbook, we're only required to log in our  
17   security counts, our security rounds, and  
18   significant events, tray pass, med pass, official  
19   code.  Giving someone a mattress, giving someone  
20   a blanket, a cup, spoon, it's not a significant  
21   event.

22          Q.    Could there ever be a situation where  
23   observing one without a mattress over and over  
24   again could be a significant event?

25                   MR. SHEETS:  Objection.

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1 MR. YOSOWITZ: Objection.

2 THE WITNESS: I'm going to say no.

3 BY MR. CAMPINHA-BACOTE:

4 Q. Okay. If someone was -- and I just want  
5 your opinion on this -- if someone was repeatedly  
6 destroying their mattress, let's say every time  
7 you did some type of round or head count you had  
8 to take some sort of action because they were  
9 destroying their mattress, would that be  
10 something that you would record in your isolation  
11 logbook?

12 MR. SHEETS: Objection. You can answer.

13 THE WITNESS: No, just notify your  
14 supervisor.

15 BY MR. CAMPINHA-BACOTE:

16 Q. Okay. So that would not be a  
17 significant event in your opinion?

18 A. Correct.

19 MR. CAMPINHA-BACOTE: Okay. Take a  
20 break now if you want.

21 (Recess taken.)

22 BY MR. CAMPINHA-BACOTE:

23 Q. Deputy Neely, I don't have too much more  
24 for you. I just want to go over some things we  
25 addressed earlier.

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1           As it relates to Mr. Peterson, have you  
2   ever had a conversation with Mr. Hahn, Mr. Doug  
3   Hahn or any other mental health liaisons or  
4   representatives?

5           A.    I have not, no.

6           Q.    You testified earlier about the  
7   procedure that you personally do when conducting  
8   rounds and head counts. Do you remember that?

9           A.    Yes.

10          Q.    You also spoke to tray pass too, right?

11          A.    Correct.

12          Q.    I'm curious to the extent that you have  
13   knowledge on this about other deputies about how  
14   they perform their rounds and head counts.

15                Do you know if other deputies, if it's  
16   required for them to actually enter the common  
17   area when performing either a head count or a  
18   round?

19               MR. SHEETS: Objection. You can answer.

20               THE WITNESS: During the head counts,  
21   yes. During the security checks, no.

22   BY MR. CAMPINHA-BACOTE:

23          Q.    Head counts, yes, required to enter the  
24   common area, but rounds, no?

25          A.    Correct.

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1           Q.     But you testified that with you  
2     personally, you enter the common area for both  
3     head counts and rounds, right?

4                     MR. SHEETS:   Objection.   You can answer.

5                     THE WITNESS:   Yes.

6     BY MR. CAMPINHA-BACOTE:

7           Q.     Are there ever any instances where you  
8     have not entered the common area during a round?

9           A.     Yes.

10          Q.     Okay.   Can you recall if during the time  
11     frame of Mr. Peterson's incarceration if you did  
12     not enter the common area on any of those  
13     instances where you were scheduled to work third  
14     shift?

15          A.     No, I cannot.

16          Q.     So as far as you remember sitting here  
17     today, each time you performed a round when  
18     Mr. Peterson was being held by FCCC II you  
19     entered the common area?

20                     MR. SHEETS:   Objection.   You can answer.

21                     THE WITNESS:   Yes, I believe so.

22     BY MR. CAMPINHA-BACOTE:

23          Q.     Okay.   Are you aware if there are any  
24     other deputies like yourself who typically enter  
25     the common area?

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1           A.    No, I am not aware.

2           Q.    No, as in you're not aware, or no,  
3   deputies don't do that?

4           A.    No, I'm not aware of any other deputies  
5   doing that. I'm not there when they do their  
6   rounds, so I really can't tell you.

7           Q.    Have you ever conducted a round with  
8   another deputy?

9           A.    No. Well, in isolation during the time  
10   of that incident with Mr. Peterson, no, I was  
11   normally by myself, so I would do the rounds by  
12   myself.

13          Q.    Okay. And I'm not sure if in that  
14   schedule -- it would have been noted on your  
15   schedule if there was another deputy on staff?

16          A.    That is correct.

17          Q.    Okay. Just let me make sure it's in  
18   here, because I know sometimes on a shift they  
19   will have more than one deputy assigned, right?

20          A.    Yes, they would have more than one  
21   deputy assigned.

22          Q.    And I think you're right. I don't think  
23   there is any shifts here where you were with any  
24   other deputy. Actually, I take that back.

25                Go back to Exhibit 2 in front of you,

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1 Page 8, and you'll see the second entry, which is  
2 Thursday, September 1st, 2011, third shift. You  
3 have your name as well as Bishop, Deputy Bishop.

4 A. I see, yes.

5 Q. Do you recall working with Deputy Bishop  
6 on that day?

7 A. I do not recall.

8 Q. Do you have any reason to doubt that you  
9 were or were not working with Deputy Bishop on  
10 that day?

11 A. No, I have no reason to doubt it.

12 Q. Okay. And, again, I'll ask the same  
13 question now that you've seen his name there.  
14 Are you aware if Deputy Bishop, whether or not he  
15 enters the common area during performing rounds?

16 MR. SHEETS: Objection. You can answer.

17 THE WITNESS: No, I do not.

18 BY MR. CAMPINHA-BACOTE:

19 Q. Why do you enter the common area if it's  
20 not required when performing rounds?

21 A. It's a personal quirk of mine. I just  
22 like to make sure everybody is still there.

23 Q. Okay. So would it be accurate to say  
24 you believe it's safe practice?

25 MR. SHEETS: Objection. You can answer.

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1           THE WITNESS: I believe it's my personal  
2 practice based on I would say being in the Army,  
3 just security.

4 BY MR. CAMPINHA-BACOTE:

5           Q. Okay. Do you believe that this practice  
6 that you do personally should be a requirement of  
7 all jail personnel?

8           MR. YOSOWITZ: Objection.

9           THE WITNESS: That would be up to the  
10 sheriff to determine whether or not the check I  
11 perform should be mandatory, so that decision is  
12 way above my pay grade.

13 BY MR. CAMPINHA-BACOTE:

14          Q. Okay. I understand that the decision  
15 ultimately lies with someone who is above your  
16 pay grade, but with respect to your personal  
17 opinion as to whether or not you think that is a  
18 good practice all deputies should be required to  
19 enter the common area, would you agree that  
20 that's something that should be done or not?

21          MR. YOSOWITZ: Same objection.

22          MR. SHEETS: Objection. You can answer.

23          THE WITNESS: I would say yes.

24 BY MR. CAMPINHA-BACOTE:

25          Q. Yes as in?



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1           A.     Yes, they should enter.

2           Q.     Okay.   Knowing that entering common  
3     cells during rounds is not required, would it  
4     surprise you if I were to tell you that some  
5     deputies don't enter common areas when performing  
6     rounds?

7                   MR. SHEETS:   Objection.   You can answer.

8                   THE WITNESS:   No, it would not surprise  
9     me.

10          BY MR. CAMPINHA-BACOTE:

11          Q.     Okay.   We talked about visibility from  
12     outside the common area into a cell such as  
13     Mr. Peterson's.   You testified that it was a  
14     little over 50 percent you couldn't see just  
15     because his was the third cell on the left.   Do  
16     you recall that conversation?

17          A.     Yes.

18          Q.     Now I want to talk about specifically  
19     what you could not see.   Let me -- strike that.

20                   I want to talk about specifically what  
21     you could see when looking through the door  
22     entering the common area into Mr. Peterson's  
23     cell.   Could you see his -- the toilet?

24          A.     We're going to rephrase, because there's  
25     actually two doors.   There's the main entrance to

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1 1 South 2, and then there is the actual -- the  
2 cell door for the single cell.

3 Q. Right. So the way I understand it is if  
4 you were standing outside of the door that lets  
5 you enter into the common area, you would be  
6 looking through two sets of doors if you wanted  
7 to see Mr. Peterson, correct? One door would be  
8 the door leading to the common area, correct?

9 A. Correct.

10 Q. And the second door would be the actual  
11 cell door for Mr. Peterson's cell, right?

12 A. Correct.

13 Q. So let's assume we're standing outside  
14 the first door I mentioned, which is the door  
15 entering the common area.

16 It's still your position here today that  
17 given that clarification we just stated, there's  
18 still about a little over 50 percent of  
19 Mr. Peterson's cell that you would not be able to  
20 see if you were looking from outside of the door  
21 that enters the common area?

22 MR. SHEETS: Objection. You can answer.

23 THE WITNESS: Correct.

24 BY MR. CAMPINHA-BACOTE:

25 Q. Okay. Same point of view, can you see

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1 Mr. Peterson's toilet from that angle?

2 A. No.

3 Q. Can you see his bed?

4 A. No.

5 Q. Can you see any part of the floor?

6 A. No.

7 Q. So it would be --

8 A. Inside his cell, no.

9 Q. Inside the cell, that's what I'm talking  
10 about.

11 So it would be safe to say if there was  
12 excessive trash in his cell, that would not be  
13 something you would be able to view from standing  
14 outside the door entering into the common area?

15 MR. SHEETS: Objection.

16 THE WITNESS: That would be correct.

17 BY MR. CAMPINHA-BACOTE:

18 Q. Okay. You also testified earlier that  
19 if Mr. Peterson or any inmate was in a part of  
20 the cell that was not in that let's just say 50  
21 percent that was viewable, you wouldn't be able  
22 to see the inmate himself, right?

23 A. That is correct.

24 Q. Just a question, is that a reason why  
25 you actually enter common cells, to make sure you

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1 can actually observe the entire cell -- condition  
2 of the cell, or is there another reason why you  
3 normally enter the cell, enter the common area?

4 MR. SHEETS: Objection. You can answer.

5 THE WITNESS: I normally enter the  
6 common area just to have eyes on everyone, just  
7 to make sure they're there.

8 BY MR. CAMPINHA-BACOTE:

9 Q. That would be consistent with my  
10 statement about you want to make sure you can  
11 actually see whether it's the inmate or whether  
12 or not there is any type of safety or security  
13 issue inside the cell?

14 A. Yes.

15 Q. Okay. I want to clarify something else.

16 With respect to seeing either inside the  
17 common area or inside individual cells, apart  
18 from the door that we spoke about that would open  
19 up and goes into the common area, are there any  
20 other areas of the jail that you could either  
21 walk by or look through to get a view of the  
22 inside of an inmate's cell in isolation, in IS2?

23 MR. SHEETS: Objection. You can answer.

24 THE WITNESS: Yes. There are windows  
25 for the common area. You can look through the

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1 windows. You can see actually into the cells.  
2 You couldn't see the floor, but you could  
3 actually see into it. You'd be able to see the  
4 writing desk, the rear window, and the back half  
5 of the bunk.

6 BY MR. CAMPINHA-BACOTE:

7 Q. Now, is this the same door that we were  
8 talking about before in terms of how you enter  
9 the common area?

10 A. No, these are windows that are set up  
11 outside the door.

12 Q. Okay, gotcha.

13 Now, I realize that during the course of  
14 this investigation you were instructed not to  
15 discuss this matter with anyone else such as  
16 deputies, family, friends, correct? Do you  
17 remember that instruction at all?

18 A. I was told you can discuss it with  
19 clergy and your spouse.

20 Q. Okay.

21 A. Beyond that, no.

22 Q. Okay. And did you discuss this with  
23 anyone else outside of clergy and spouse?

24 A. No, I did not.

25 Q. Okay. What about after the incident?

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1 Obviously you were aware of the fact that certain  
2 violations were considered against you as were  
3 stated in that letter I showed you earlier,  
4 correct?

5 A. Correct.

6 Q. I know oftentimes people will get  
7 together with either friends or maybe other  
8 deputies that you have a close relationship with  
9 and talk about things.

10 Did you ever talk about Mr. Peterson  
11 with any other deputies outside of the  
12 investigation?

13 MR. SHEETS: Objection only because I  
14 think we covered this. When you started, you  
15 asked him the same questions, but you can answer.

16 THE WITNESS: No.

17 BY MR. CAMPINHA-BACOTE:

18 Q. No? Okay.

19 Are you aware of -- and if I asked this  
20 question, again, I apologize -- other deputies  
21 outside yourself talking about it, whether  
22 overhearing any conversation or not?

23 A. No.

24 Q. Okay. As a result of the investigation  
25 and perhaps the findings of Lieutenant D'Errico,

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1     were you ever instructed by a supervisor or  
2     anyone on how to perform your job differently?

3             MR. SHEETS:  Objection.  You can answer.

4             THE WITNESS:  Well, in the logbook we're  
5     supposed to write "security check" instead of  
6     "round."  That's about it.

7     BY MR. CAMPINHA-BACOTE:

8             Q.     Okay.  With respect to cleaning, did you  
9     receive any instruction on cleaning that was  
10    different than how you performed your job before  
11    the Peterson incident?

12            MR. SHEETS:  Objection.  You can answer.

13            THE WITNESS:  They said, "Take out the  
14    trash," but I already did that, so no.

15    BY MR. CAMPINHA-BACOTE:

16            Q.     Elaborate just so I know what you mean  
17    by --

18            A.     They just said take out the -- make sure  
19    you trash the trash out at the end of tray pass,  
20    but I already did that, so no.

21            Q.     In what form or setting was this  
22    instruction given to you?

23            MR. SHEETS:  Objection.  You can answer.

24            THE WITNESS:  Roll call.

25    BY MR. CAMPINHA-BACOTE:

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1           Q.    Roll call?  And I'm assuming that's with  
2           everyone on your shift, the supervisor stated  
3           that to everyone there?

4           A.    Yes.

5           Q.    Okay.  Can you recall about when that  
6           happened?

7           A.    I cannot, no.

8           Q.    Was it this year or last year?

9                   MR. SHEETS:  Rather than break up every  
10          question you have with regard to this, Avonte,  
11          I'm going to object to all subsequent remedial  
12          measure-type stuff.

13                 MR. CAMPINHA-BACOTE:  That's fine.

14                 MR. SHEETS:  And I don't want to  
15          interrupt your flow by objecting to every  
16          question.  I do reserve the right to lodge a  
17          further objection to form or something like that.

18                 MR. CAMPINHA-BACOTE:  That's fine.

19                 MR. SHEETS:  Okay.

20                 THE WITNESS:  I do not remember when.

21          BY MR. CAMPINHA-BACOTE:

22                 Q.    Okay.  And I think my question was if  
23          you -- I don't know if you were saying yes, you  
24          don't remember if it was 2012 or 2013 or --

25                 A.    No, I don't remember what year.



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1           Q.    Okay.  Gotcha.  I apologize, I didn't  
2   hear you.

3                   Just one final thing.  I want to know if  
4   you reviewed this.  I'm going to refer you to  
5   Exhibit 5, which is the memo.  I'm handing you,  
6   Deputy Neely, what's been marked as Exhibit 5.  
7   If you can actually read through that entire memo  
8   and let me know if you've seen this document  
9   before.

10          A.    I have not.

11          Q.    You have not seen this document before?

12          A.    I have not.

13          Q.    As best as you can recall, do you  
14   remember anyone ever discussing any of the  
15   contents of this memo with you?

16          A.    Supervisors would say we have to do  
17   single cell inspections, just make sure you clean  
18   up.

19          Q.    Was that a part of roll call or  
20   something outside of roll call?

21          A.    That was part of roll call.

22          Q.    Okay.  Outside of roll call, anything  
23   else where someone has addressed any of the  
24   issues in this memo with you?

25          A.    No.

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1                   MR. CAMPINHA-BACOTE: Okay. I have no  
2 further questions.

3                   MR. YOSOWITZ: None from me.

4                   MR. SHEETS: He'll read.

5                   (Signature not waived.)

6   - - -

7                   (Thereupon, the deposition was concluded  
8 at 3:15 o'clock p.m. on Monday,  
9 July 15, 2013.)

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C E R T I F I C A T E

- - -

State of Ohio, )  
 ) SS:  
 County of Franklin, )

- - -

I, Amy L. Miller, Registered Professional Reporter and Notary Public in and for the State of Ohio, hereby certify that the foregoing is a true and accurate transcript of the deposition testimony, taken under oath on the date hereinbefore set forth, of Damien Neely.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which the deposition was taken; and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in the action; and further that I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Ohio Civil Rule 28(D).



*Amy L. Miller*

Amy L. Miller, Registered Professional Reporter and Notary Public in and for the State of Ohio

My Commission Expires: October 30, 2016

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